Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Further Streamlining	)	CC Docket No. 01-150
Measures for Domestic Section 214	)	
Authorizations	)	

REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Sharon J. Devine
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2975

Attorney for

QWEST COMMUNICATIONS
INTERNATIONAL INC.

October 9, 2001

<u>TABLE OF CONTENTS</u>

<u>Page</u>

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Further Streamlining	)	CC Docket No. 01-150
Measures for Domestic Section 214	)	
Authorizations	)	

REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc. ("Qwest"), through counsel, submits its Reply Comments in the Federal Communications Commission's ("Commission") above-referenced *Declaratory Ruling and Notice of Proposed Rulemaking*.[1]

I. INTRODUCTION AND SUMMARY

The Commission has asked whether and under what circumstances the Commission should streamline its 214 processes. All commenters support some form of streamlining, indicating a broad consensus that more post-transaction notices, fewer requirements for pre-approval, and faster review will reduce unnecessary burdens on the Commission and applicants alike, and speed the consummation of transactions, while preserving the Commission's authority to interject if necessary. The only real debate is the degree of streamlining and whether the Commission will succumb to pleas for additional processes, thresholds, and categorizations in the name of streamlining. It should not. The Commission has an opportunity to take bold steps to revise the domestic 214 process to produce simple, predictable[2] and speedy review of 214 applications for dominant and non-dominant carriers alike. Qwest agrees with many of the

[1] *In the Matter of Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, *Declaratory Ruling and Notice of Proposed Rulemaking*, FCC 01-205, rel. July 20, 2001 ("*NPRM*" or "*Declaratory Ruling*"). *And see* 66 Fed. Reg. 41823 (Aug. 9, 2001).

[2] WorldCom, Inc. ("WorldCom") at 2.

underlying principles and analyses offered by others, but believes those principles and analyses warrant different conclusions, especially as applied to dominant carriers.

II. THE COMMISSION SHOULD DRAMATICALLY STREAMLINE 214 APPLICATIONS AND THEIR REVIEW

All commenters claim to support streamlining of the 214 process,[3] but they differ in the degree and manner of relaxation of the rules. Some want to reduce 214 requirements for most categories of transactions but to heap all the current requirements, and more, onto dominant carriers and large non-dominant carriers.[4] In large measure, these commenters advocate barriers to approval of license transfers and transactions for dominant carriers, and more precisely for the Bell Operating Companies.

Qwest, which is both a non-dominant and a dominant carrier,[5] alone recommends substantial and uniform revisions to the 214 process as applied to *all* carriers. Qwest agrees with those who support a notice procedure after the fact for *pro forma* assignments and transfers of corporate control.[6] As Qwest and other commenters have noted, *pro forma* assignments and transfers of corporate control, by definition, raise no public interest concerns. There is no change in the actual control of the license, and indeed, no reason for the Commission to inquire into such transactions.[7] Material delays in consummating transactions caused by the current process, which entails notice of the application, comment, and a waiting period results in uncertainty,

---

[3] *See* AT&T Corp. ("AT&T") at 1; Association of Communications Enterprises ("ASCENT") at 1; Competitive Telecommunications Association ("CompTel") at 1; Qwest at 1; United States Chamber of Commerce at 2; Verizon at 1-2; WorldCom at 1-2.

[4] ASCENT at 5-15. *And see* CompTel, *in general*, arguing for streamlining of Section 214 rules for non-dominant carriers only. *Also*, WorldCom at 6-10, drawing a distinction between the different classes of carriers.

[5] The dominant label has outlived its usefulness. *See* page 4 *infra*.

[6] AT&T at 4-6; CompTel at 5; Verizon at 5-7; WorldCom at 4.

[7] Qwest at 4-5; AT&T at 5-6.

additional cost, and unnecessary burden on the Commission and applicant, without any countervailing public interest benefit. In line with its goals of deregulation, the Commission should adopt a requirement for post-transaction notice for these types of transactions.[8]

Qwest also agrees with recommendations that the Commission adopt streamlining for transfers involving non-dominant carriers.[9] Without endorsing or supporting the concept of differing regulation as applied to so-called "dominant" and non-dominant" carriers,[10] Qwest urges the Commission to adopt radically streamlined procedures for non-dominant carriers at a minimum. In this regard, the Commission should not be seduced by suggestions that market share, or other measures and thresholds, as suggested by ASCENT,[11] will facilitate review. As pointed out by Qwest in its Comments, there is no need for an elaborate process to determine whether a transaction qualifies for streamlined review when the inevitable squabbles over eligibility would swallow the exception or duplicate the ultimate review.[12] As AT&T notes, proxies for market power such as size or market share are notoriously imperfect substitutes.[13] For these same reasons, the Commission should not adopt a waiver process, which would result in further analysis over the appropriateness of a waiver and take away resources from, and create delay in reaching, the ultimate substantive question, should a question exist. Size, absolute number of lines, or market share have little to contribute to the question of fast versus slow review.[14] Such inquiries serve only to distract the Commission from its real mission -- whether a

---

[8] *See* note 7 *supra*.

[9] AT&T at 13; CompTel at 4; Verizon at 7-8.

[10] Qwest at 5-6.

[11] ASCENT at 10-13.

[12] Qwest at 6-7.

[13] AT&T at 8-12.

[14] *Id.*

transfer of licenses so negatively affects the use of the interstate lines that the present and future public convenience and necessity is harmed.[15]

III. THE PURPORTED JUSTIFICATIONS FOR STRICTER SCRUTINY OF DOMINANT CARRIERS ARE SPECIOUS

Qwest parts company with those commenters who insist that dominant carriers should be treated more severely than other carriers. AT&T's reasoning is circular: it posits a bright line test it says is simple -- if a carrier is dominant, it gets no streamlined review under the Commission's precedent and rules.[16] Having achieved non-dominant status as a long distance carrier in the 1990s, AT&T has traded on this label ever since, even though its business has morphed substantially since then. Continuing adherence to an antiquated scheme of designation, is no longer valid or relevant. The Commission's historical application of "dominant" regulation to carriers as opposed to services is irrational and disserves the public interest. It is *services* that may be dominant or not and then only with respect to specific geographic markets; not *carriers*. The Commission should take this opportunity to treat all carriers' 214 applications under the same rules, and begin to de-emphasize its outdated and arbitrary "entity" approach to regulation.

Moreover, AT&T engages in revisionist history when it asserts that Qwest's merger with U S WEST raised significant competitive issues arising from the vertical nature of the merger, forcing the Commission to order Qwest to divest its "long distance assets" in U S WEST's

[15] Verizon at 2.

[16] AT&T at 12-13. WorldCom would permit streamlined treatment if a dominant local exchange carrier ("LEC") acquired LEC assets outside its local service area, but not if a 271 issue were involved. In support of that position, WorldCom uses innuendo to reference "lessons" learned from the Qwest-U S WEST merger. WorldCom at 8-9. Whatever imaginary horribles WorldCom suggests have yet to be identified, much less turned into "lessons." In any event, as Qwest noted in its Comments, the Commission has ample enforcement authority to address 271 issues, if appropriate.

incumbent territories.[17] In fact, the Commission did not require the divestiture of any *long distance* assets,[18] because of any concern over the "vertical" nature of the merger.[19] Rather, the Commission required Qwest to divest its in-region interLATA services because to continue to provide them would violate Section 271. Indeed, the Department of Justice, which is charged with antitrust review of mergers, and which would be expected to be concerned with anticompetitive impacts, whether vertical or horizontal, decided not to issue a Second Request, and the Federal Trade Commission granted *early termination* of the Hart-Scott-Rodino waiting period for the Qwest-U S WEST merger.[20] That determination should be dispositive of any claim that vertical integration achieved through the merger is anticompetitive.

For the reasons explained above, the Commission should take bolder steps to streamline 214 applications, by:

- Eliminating the requirement that resellers and non-dominant carriers with blanket 214 authority must file additional 214 applications for a change of corporate control and eliminating a 214 application for *pro forma* assignments and internal corporate restructures. A post-transaction notice within a reasonable period is sufficient.

---

[17] AT&T at 15.

[18] *In the Matter of Qwest Communications International Inc. and US WEST, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, *Memorandum Opinion and Order*, 15 FCC Rcd. 5376, 5378-79 ¶ 3 (2000); *Memorandum Opinion and Order*, 15 FCC Rcd. 11909, 11912 ¶ 5 (2000).

[19] AT&T at 15.

[20] *See* letter from Marcus Brown, Premerger Notification Office, Federal Trade Commission, to David J. Saylor, Hogan & Hartson LLP, Counsel for Qwest Communications International Inc., dated Sep. 2, 1999.

- Shortening the review period for both dominant and non-dominant carriers that are not covered by a blanket authorization, with an automatic grant of approval of the 214 application if the Commission fails to act within 31 days.
- Curtailing dramatically its extensive public interest review of license transfers, and deferring to the antitrust agencies of the federal government to assess competitive issues that arise in changes of control accompanied by Section 214 applications.

Respectfully submitted,

QWEST COMMUNICATIONS
INTERNATIONAL INC.

By: Sharon J. Devine

Sharon J. Devine
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2975

October 9, 2001

Its Attorney

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the **REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) served, via hand delivery, on the FCC's duplicating contractor Qualex International, and 3) served via First Class United States mail, postage prepaid, on the parties listed on the attached service list.

Richard Grozier
Richard Grozier

October 9, 2001

Mary L. Brown
Karen M. Johnson
WorldCom Inc.
1133 19th Street, N.W.
Washington, DC 20036

Mark C. Rosenblum
Lawrence J. Lafaro
AT&T Corp.
295 N. Maple Avenue
Basking Ridge, NJ 07920

David L. Lawson……………………….AT&T
C. Frederick Beckner III
Sidley Austin Brown & Wood
1501 K Street, N.W.
Washington, DC 20005

Lawrence W. Katz
Michael E. Glover
Edward Shakin
Verizon
Suite 500
1515 North Court House Road
Arlington, VA 22201-2909

Charles C. Hunter……………………ASCENT
Catherine M. Hannan
Hunter Communications Law Group
Suite 105
1424 Sixteenth Street, N.W.
Washington, DC 20036

Robert J. Aamoth………………..COMPTEL
Joan M. Griffin
Kelley Drye & Warren LLP
Suite 500
1200 19th Street, N.W.
Washington, DC 20036

Carol Ann Bischoff
Jonathan D. Lee
Competitive Telecommunications
Association
Suite 800
1900 M Street, N.W.
Washington, DC 20036

William L. Kovacs
United States Chamber of Commerce
1615 H Street, N.W.
Washington, DC 20062-2000

Qualex International
Room CY-B402
Portals II
445 12th Street, S.W.
Washington, DC 20554